JD(SF)–14–11
Lakewood, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS-WEST
(Lakewood Regional Medical Center)

and Case 21–CB–15007

NATIONAL UNION OF HEALTHCARE WORKERS

Irma Hernandez, Esq., of Los Angeles, California,
for the General Counsel.

Jacob J. White, Esq. (Weinberg, Roger & Rosenfeld),
of Los Angeles, California, *and Bruce A. Harland, Esq.*
with him on brief (Weinberg, Roger & Rosenfeld),
of Alameda, California, for the Respondent.

DECISION

Statement of the Case

CLIFFORD H. ANDERSON, Administrative Law Judge. This case was tried in Los Angeles, California, on April 21, 2011. The National Union of Healthcare Workers (the Charging Party) filed the charge on August 4, 2010,[1] against Service Employees International Union, United Healthcare Workers-West (the Respondent or the Union) and amended the charge on September 30, 2010. The General Counsel issued the complaint on December 30, 2010. Posthearing briefs by the General Counsel and the Respondent were timely submitted on May 26, 2011.

The complaint as amended at the hearing alleges and the answer denies that the Respondent improperly enforced the union-security clause in its then applicable collective-bargaining agreement (the contract) with Lakewood Regional Medical Center (the Employer or the hospital) respecting its 3700 East South Street, Lakewood, California hospital employees in the unit described below by requesting the Employer fire unit member Terrence L. Carter for alleged union-security clause dues arrearages and causing the Employer to fire Carter at a time the union had failed to give adequate notice to Carter of the amount and method of computation of the dues delinquencies required by the Respondent under the contract as a condition of acquiring and retaining membership in the Respondent. The complaint further alleges that by this conduct the Respondent has been attempting to cause and has caused the employer to discriminate against its employee in violation of Section 8(a)(3) of the Act, and thereby has

[1] All dates are in 2010, unless otherwise indicated.

engaged in a violation of Section 8(b)(1)(A) and (2) of the Act. The Respondent in its answer denies that it had violated the Act.

Findings of Fact

Upon the entire record[2] herein including helpful briefs from the General Counsel and the Respondent, I make the following findings of fact.[3]

I. Jurisdiction

At all material times, Lakewood Regional Medical Center, a California corporation, with a facility located at 3700 East South Street, Lakewood, California (the hospital), has been engaged in the operation of an acute care hospital.

During the 12-month period ending August 4, 2010, a representative period, the Employer, in conducting its business operations described above derived gross revenues in excess of $250,000 and purchased and received at the hospital goods valued in excess of $50,000 directly from points outside the State of California.

Based on uncontested facts, the Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a healthcare institution within the meaning of Section 2(14) of the Act.

II. Labor Organization

The pleadings establish, there is no dispute, and I find the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. The Collective-Bargaining Relationship

The following employees of the Employer, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included:	All full-time, regular part-time and per diem service and maintenance, technical, skilled maintenance, and business office clerical employees employed by the Employer and all full-time, part-time and per diem professional employees.
Excluded:	All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility-based or not) who are solely engaged in qualifying or collection activities, or are employed by another Tenet entity, such as Syndicated Office Systems or Patient Financial Services, employees of outside registries and other agencies supplying labor to the Employer, office clerical employees, registered nurses, registry nurses, traveling nurses, regularly assigned charge nurses, and already-represented employees.

[2] The General Counsel's unopposed motion to correct transcript is granted.

[3] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact regarding collateral matters. Where not otherwise noted, the findings herein are based on the pleadings, the stipulations of counsel, or unchallenged credible evidence.

Since on or about January 1, 2007, and at all times material herein, the Respondent has been the designated exclusive collective-bargaining representative of the Employer's employees in the unit, and since said date the Employer has recognized the Respondent as such representative. This recognition is embodied in a contract that was effective from January 1, 2007, through March 31, 2011 (the contract).

At all times since on or about January 1, 2007, and continuing to date, based on Section 9(a) of the Act, I find the Respondent has been the exclusive collective-bargaining representative of the Employer's employees in the unit.

Article 23 of the contract contains a union-security clause that required members of the unit to pay the Respondent initiation fees and periodic dues following the thirty-first (31st) day of their employment. Further, article 23 of the contract provided for the Employer, upon receipt of a voluntarily executed employee check-off authorization form, to deduct such fees or dues from the payroll check of the employee and remit such sums directly to the Respondent.

IV. The Events Respecting Terrence L. Carter

Unit employee Terrence L. Carter, an Electroencephalogram (EEG) technologist, commenced unit employment in 2006. He served as a union steward from 2006 to March 2009, at which time he was removed by the union from his position. He revoked his union dues check-off authorization form on or about March 6, 2009, ending his authorization for the Employer to deduct union dues from his paycheck and remit the deducted amount directly to the Respondent. All dues payments made by Carter to the Respondent thereafter were made directly to the Respondent.

The amount of monthly dues owed by Carter at relevant times was 2 percent of his straight time earnings.[4] The parties stipulated that Carter remitted dues payments to the Respondent by personal check in the following amounts which payments were received by the Respondent on the dates indicated. Carter made no other payments to the union in the period.

August 2009 (but after August 17, 2009)	$30
November 10, 2009	$35
December 18, 2009	$30
January 20, 2010	$30
February 18, 2010	$29
March 16, 2010	$30
April 27, 2010	$29
June 8, 2010	$30 or $60[5]
July 1, 2010	$29

The Respondent cashed the submitted checks, deposited the funds in its accounts and seemingly credited the amounts paid to Carter's dues account. At no time did the Respondent suggest to Carter his payments were unacceptable. At no time did the Respondent indicate to Carter how these payments had been applied to his dues obligations.

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[4] The Respondent's constitution and bylaws for the applicable period set a minimum level of monthly dues based on the unit member's annual earnings. The Respondent's then administrative assistant and auditor at the time of her testimony, Katherine De Jesus, however testified credibly and without contradiction that Carter's dues obligation at relevant times was 2 percent of monthly straight time earnings.

[5] The record is undisputed that the Respondent received one check for $30. A second check for $30 may also have been submitted.

The Respondent sent a letter to Carter dated August 17, 2009 which was received by him in the normal course. The letter was captioned "Final Notice" and contained the following text:

> On May 29, 2009 we sent you a letter explaining your financial obligations to SEIU United Healthcare Workers West (the union) pursuant to the collective bargaining agreement between the union and Lakewood Regional Medical Center. We invited you at that time to meet your obligations to the union through payroll deduction, although we noted that you are not obligated to do so. As we explained, your financial obligations to the union continue whether or not you choose to meet them through payroll deduction.
>
> The union-security provision requires, as a condition of employment, that you tender to the union periodic dues or fees uniformly required as a condition of acquiring or maintaining membership. You are not required by the union-security provision to become or remain a member of the union. If you do not become or do not remain a member of the union, you may object to the expenditure of that portion of your fees used for non-collective bargaining purposes. You have been periodically informed of your rights, if you do not become or remain a member of the union, to so object and to challenge the representational cost allocations made by the union.
>
> You are currently delinquent in your financial obligations to the union under the collective bargaining agreement. The amount that your delinquency, i.e. the amount that you owe the union from March 29, 2009 through July 04, 2009 is $163.13. This calculation was arrived at as follows: the dues rate for the union is 2% of actual gross straight time earnings, to a maximum monthly rate of $98.00 ($45.23 biweekly, $49.00 semi-monthly). Dues are not charged on overtime pay, call-back pay, standby pay, differentials or premiums paid in lieu of benefits. You ceased meeting your financial obligations to the union, through payroll deduction or otherwise, effective with the pay period beginning March 29, 2009. Information obtained from your employer reflects that your gross actual straight time earnings between March 29, 2009 and July 04, 2009 were $8,156.59. Accordingly, your arrearage to the union as of July 04, 2009 is $163.13.
>
> If we do not receive your payment for fee arrearages in the amount of $163.13 by September 07, 2009, we will demand that Lakewood Regional Medical Center begin proceedings to remove you from employment due to your failure to comply with Article 23, section A. of the contract that states: ". . . employees of the Employer who are subject to this Agreement shall be required as a condition of employment to maintain membership in the Union in good standing, subject to federal law. Compliance is required by the 31st day after employment. . . . B. The Union shall notify the Employer and the affected employee in writing of an employee's failure to comply with the provisions of this Article and shall afford each such employee fifteen (15) work days, after the employee has been mailed such notice at his or her last known address, in which to comply. If said employee does not comply with the provisions of this Article within ten (10) day period following actual notice, the employee shall be promptly terminated upon written notice of such fact from the Union and the Employer.
>
> In order to avoid our notifying the employer to commence proceedings that can result in your discharge, your payment in the amount of $163.13 must be received by the union no later than September 07, 2009, You may make payment by sending your check or money order, made payable to SEIU United Healthcare Workers-West, to:

Membership Department
SEIU United Healthcare Workers-West
[address deleted]

If you wish to prospectively meet your dues obligations through payroll deduction, you may also return a signed payroll authorization form (copy enclosed) to the above address.

If you feel that you have been sent this letter In error, please contact the Membership Department at [phone number deleted].

As always, it is our hope that you will join the union to help us build strength and continue to fight to Improve the lives of all unit members. Your participation would be more than welcome.

Carter responded with a letter dated, sent and received in August 2009,[6] which contained the following text [bolding and capitalization in original]:

With regard to the letter that you sent, I have some concerns regarding the amount you are charging and believe that it may not be accurate.

The letter states that it is a "final notice" yet this is the **first** letter that has ever been sent to me stating an amount owed by me to the union.

It is difficult to conceive under what set of rules, laws, circumstances or principles that a letter, stating for **the first time** an amount owed, could be considered in any arena a final notice. I have serious doubts about the ethical conduct of the SEIU's action and the ability of your letter to meet the legal threshold of a final notice.

Furthermore, your paid staff, Elizabeth Castillo, has told our fellow members at Garden Grove Medical Center that if a member "restarts·their dues, all "back dues" will NOT be owed. This information, which is being provided by your staff, Castillo, is inconsistent with your letter demanding back dues.

I would like clarification, in writing regarding the policy, since SEIU is providing different information to different groups of healthcare workers.

However, as an act of good faith on my part I have enclosed the amount of $ _____[7] to address the alleged arrearages. Furthermore I am now making a formal request for the following:

1. The union provide me with a full accounting of how my dues amount was calculated.

[6] While the parties stipulated the letter, simply dated August 2009 without a day specified, was sent and received in August, the fact that it is in response to the Respondent's letter of August 17, 2009, establishes that it was sent no sooner that that letter's receipt.

[7] While the letter provided a blank line for the amount, Carter's check for $30 accompanied the letter which check was cashed and processed by the Respondent in the normal course.

2. Information, including any forms necessary, on how I may become a Beck Objector. To date the union has failed to fulfill this requirement as required under the applicable labor law.

3. That I be placed on a quarterly dues billing cycle and that the dues cycle billing include a full accounting of how my dues are being calculated.

4. The policy on forgiving "back" dues that Castillo has stated.

Please provide the above information as soon as possible so that there will be no lapse in addressing future financial obligations. I trust that the enclosed payment will satisfy the union's request and that there will be no further need by the union to waste dues money on such threatening and repugnant letters.

On January 20, 2010, Carter wrote again to the Respondent who received the letter on January 25. He included a check for $30. The letter stated:

For several months, I requested an itemized bill from SEIU, and as yet I have not received anything. The notices that you are passing out, is not an itemized bill, the members are waiting for it too. Also I've requested any and all information on the Beck objections, I have not received that either. So I am requesting both items again, the Beck objections and the itemized bill to pay our dues. People I asked were Cory Cordova, Mosana Mander and Henry Fernandez.

Thereafter, on March 15, 2010, the Union sent and Carter received in the normal course another "Final Notice." The language tracked the language of the earlier "Final Notice" quoted above, save that the calculation paragraphs differed as follows:

You are currently delinquent in your financial obligations to the union under the collective bargaining agreement. The amount of your delinquency, i.e., the amount that you owe the union from pay period ending November 7, 2009 through February 27, 2010 is $213.00. This calculation was arrived at as follows: the dues rate for the union is 2% of actual gross straight time earnings, to a maximum monthly rate of $98.00 in year 2009 and $102.00 in year 2010. Dues are not charged on overtime pay, call-back pay, standby pay, differentials or premiums paid In lieu of benefits. You ceased meeting your financial obligations to the union, through payroll deduction or otherwise, effective with the pay period ending November 7, 2009. Information obtained from your employer reflects that your gross actual straight time earnings between pay period ending November 7, 2009 and pay period ending February 27, 2010 were $10,651.71. Accordingly, your arrearage to the union as of February 27, 2010 is $213.00.

If we do not receive your payment for fee arrearages in the amount of $213.00 by April 05, 2010, we will demand that Lakewood Regional Medical Center begin proceedings to remove you from employment due to your failure to comply with Article 23 Union-security of the contract that states: "A. During the life of this Agreement, employees of the Employer who are subject to this Agreement shall be required as a condition of employment to maintain membership in the Union in good standing, subject to federal law. Compliance is required by the 31st day after employment. B. The Union shall notify the Employer and the affected employee in writing of an employee's failure to comply with the provisions of this Article and shall afford each such employee fifteen (15) work days, after the employee has been mailed such notice at his or her last known address, in which to comply. If said employee does not comply with the provisions of

this Article with ten (10) day period following actual notice, the employee shall be promptly terminated upon written notice of such fact from the Union and the Employer."

In order to avoid our notifying the employer to commence proceedings that can result in your discharge, your payment in the amount of $213.00 must be received by the union no later than April 05, 2010. You may make payment by sending your check or money order, made payable to "SEIU-UHW" to:

Membership Department
SEIU United Healthcare Workers-West
[address omitted]

The Union did not at this time seek the discharge of Carter. Rather, on May 10, 2010, the Union sent and in due course Carter received a third "Final Notice" from the Union. That letter stated:

On 3/15/2010, we sent you a letter explaining your financial obligations to SEIU-United Healthcare Workers–West (the union) pursuant to the collective bargaining agreement between the Union and Lakewood Regional Medical Center. We invited you at that time to meet your obligations to the Union through payroll deduction, although we noted that you are not obligated to do so. As we explained, your financial obligations to the Union continue whether or not you choose to meet them through payroll deduction.

The Union-security Provision requires, as a condition of employment, that you tender to the Union periodic dues or fees uniformly required as a condition of acquiring or maintaining membership. Although you are automatically a member of the Union pursuant to the Union's Constitution by being employed in a bargaining unit for which the Union is the exclusive collective bargaining agent, you are not required by the Union-security Provision to remain a member of the Union and you may resign your Union membership at any time. To resign your Union membership you must send a letter, personally signed by yourself, stating clearly that you do not wish to be a Union member, and containing your name, mailing address, employer name, daytime telephone number where you can be reached and the last four digits of your social security number, addressed as follows: Membership Department, United Healthcare Workers-West,[address omitted]. If you resign your Union membership, you may object to the expenditure of that portion of your fees used for non-collective bargaining purposes. You have been periodically informed of your rights, if you choose not to remain a member of the Union, to so object and to challenge the representational cost allocations made by the Union.

You are currently delinquent in your financial obligations to the Union under the collective bargaining agreement. The amount of your delinquency, i.e., the amount that you owe the Union from pay period 11/7/2009 through pay period 4/24/2010 is $236.16. This calculation was arrived at as follows: the dues rate for the Union is 2% of actual gross straight time earnings, to a maximum monthly rate of $98.00 in 2009 and $102.00 in 2010. Dues are not charged on overtime pay, call-back pay, standby pay, differentials or premiums paid in lieu of benefits. You have not met your financial obligations to the Union, through payroll deduction or otherwise, effective with pay period ending 11/7/2009. Information obtained from your employer reflects that your gross actual straight time earnings between pay period 11/17/2009 and pay period 4/24/2010 were $15474.71. Accordingly, your arrearage to the Union as of 4/24/2010 is $236.16.

If we do not receive your payment for fee arrearages in the amount of $236.16 by May 31, 2010, we will demand that Lakewood Regional Medical Center begin proceedings to remove you from employment due to your failure to comply with Article 3, Sections A.1.-A.2. of the contract which states:

> "A.1. During the life of this Agreement, employees of the Employer who are subject to this Agreement shall be required as a condition of employment to maintain membership in the Union in good standing, subject to federal law. Compliance is required by the 31st day after employment or the 31st day after the date of this Agreement, whichever is later.
>
> A.2. An employee who fails to comply with this requirement shall be replaced within forty-five (45) days after written notice to the Employer by the Union concerning the delinquency, unless the employee has remedied the delinquency within said forty-five (45) day period."

In order to avoid our notifying the employer to commence proceedings that can result in your discharge, your payment in the amount of $236.16 must be received by the Union no later than May 31, 2010. You may make payment by sending your check or money order, made payable to "SEIU-UHW" to:

Membership Department
SEIU United Healthcare Workers-West
[address omitted]

If you wish to prospectively meet your dues/fees obligations through payroll deduction, you may also complete and return the enclosed Payroll Deduction Authorization form in the enclosed postage-paid return envelope.

If you believe you have been sent this letter in error, please contact the Membership Department at [telephone number omitted].

As always, it is our hope that you will actively participate in the Union to help us build strength and continue to fight to improve the lives of all unit members. Your participation would be more than welcome.

The union's auditor, Katherine De Jesus, testified she entered the data in the letter respecting the dues rate and Carter's earnings which generated the dues for the period. While she was not explicit in her testimony nor in the letter, it is clear that since the dues amount resulting from multiplication of Carters straight time earnings ($15,474.71) with the 2 percent formula equalled $309.49 that the letter's recited amount of dues delinquency of $226.16, implicitly, but silently, included a credit of Carter's payments in the period against the larger dues amount to produce the smaller net deficiency.

Carter did not respond to this letter.

On June 18th, 2010, the union's representative/organizer, Cory James Cordova, testified he had a conversation with Carter on the hospital cafeteria patio. Cordova testified he handed Carter a copy of the union's May 10, 2010 letter quoted immediately above in a sealed envelope. Carter told him, in Cordova's memory, "thanks, I'll put it with the others." Cordova

recalled he told Carter of his dues arrearage and that he could contact Katherine De Jesus: "she'll break it down for you if you have questions." Cordova testified Carter simply replied that he was not going to call anyone and that he was "100% paid up."

Carter described this conversation:

> Cory Cordova came out there where I was and he told me straight out that I Owed—he asked me did I know that I owe union dues.
> Q. And did you reply?
> A. Yes, I did.
> Q. And what did you tell him?
> A. I responded to him and said I receive an itemized bill, that's when I'm going to pay my union dues.
> Q. Do you remember if Mr. Cordova said anything else during that conversation?
> A. He said you can lose your job.
> Q. And did you reply?
> A. Yeah.
> Q. And what did you tell him?
> A. Basically, I reiterated that until I receive an itemized bill as I requested just to make sure that it's correct then I will pay my dues.

Both Carter and Cordova were credible during their testimony. Carter was testifying about a single conversation respecting a subject concerning which he had strong emotions. Cordova testified he was engaged in numerous contacts with employees during the period concerning dues arrearages. I find that Carter honestly and accurately recalled his statements to Cordova and that Cordova's version of events was correct as far as it went but that it was not the entirety of the remarks exchanged.

On or about June 30, 2010, Cordova testified he learned of a list of hospital unit members who were on a hospital list of employees who were to be laid off on July 31, 2010. Within a very few days Cordova had a conversation with Carter, who was on the Employer list. They met again on the hospital cafeteria patio. Cordova recalled that Carter was essentially noncommunicative with him, expressing the view that the union was not going to help him because the entire circumstance was a cover up to conceal the true reason for "getting rid of him." In subsequent conversations with Carter arising in the context of the Employer's decision to undertake a reduction-in-force, Cordova testified without specification as to date or place:

> Q. During your—the many conversations that you had with Mr. Carter during that time period, did he ever give you an indication either way about whether he was going to pay his dues to the union?
> A. Yes.
> Q. What did he say?
> A. He doesn't owe them anything—anything from he doesn't owe them anything to he's 100% paid up, for example, at the one conversation. And we don't owe you anything because you don't represent us.

On July 9, 2010, the Respondent acting through Cordova, by e-mail, sent Mary Okuhara-Yip, the director of human resources of the hospital, the following communication:

Okuhara, Mary

From: *Cory* Cordova [email address deleted]
Sent: Friday, July 09, 2010 10:55 AM
To: Okuhara, Mary
Cc: ronna.petrucelll@ [remainder of email address deleted]
Subject: Terrence Carter noncompliance notice
Friday, July 09, 2010 10:55 AM
Attachments: Terrence final dues ltr.doc

Dear Ms. Mary Okuhara-Yip,

As we have discussed Mr. Terrence Carter has been in noncompliance with his dues and is not a member in good standing. Today is the official date of the Union's Notification to Lakewood Regional Medical Center of Mr. Carters failure to meet his obligation to Article 23 of the CBA. Attached is the notification the Union has been consistently using and has used with Tenet employees.

The format of the letter is actually a notice, from the employer to the employee, of HR's notification from the Union and the process to be followed.
Please feel free to call me to discuss any questions.
Sincerely,
Cory Cordova,
SEIU-UHW

Rather than take action on the e-mail request, Mary Okuhara-Yip contacted Cordova seeking a clarification of exactly what the union wished the hospital to do with Carter. She testified that the union's letters of July 29 and 30, 2010, described below, were in response to this exchange. Cordova recalled that the hospital representative Kathy Myrick had contacted him on or about July 25, 2010. He described the conversation:

> The employer's response was to give [Carter]—in how she explained, the spirit of the contract language, to give him another 15 working days after our 21 days or 21 calendar days and the goal—I didn't have a problem with that because the goal was to get him caught up and preserve his employment.
> Q. Okay. Can you recall any other conversations?
> A. Oh. Well, actually, yeah. From both Kathy [De Jesus]—in this conversation first. Then in this same conversation Kathy Myrick stated, so, if he doesn't comply and we get to the deadline date, can you send us another letter to notify us to enforce the Article 23.
> Q. And what was your response to that?
> A. I didn't have an issue with it. I said I will do that.

On or about July 29, 2010, without notifying Carter at this time that the union was going to seek his termination, the Respondent acting through Cordova, by letter to Mary Okuhara-Yip, the director of human resources of the hospital, requested the Employer fire Carter for dues arrearages. The body of the letter read:

It has come to my attention that Terrence Carter has been and is currently delinquent in his arrears to the Union through pay period ending 7/17/10. Our Membership Department has sent him several notices regarding this delinquency and has failed to settle this delinquency, nor has he submitted a signed Payroll Deduction form for Union dues.

Therefore, pursuant to Section B. Article 23 of the Collective Bargaining Agreement entitled "Union-security,–Failure to Make Required Payments", we respectfully request that Lakewood Regional Medical Center enforce this requirement immediately.

Any questions or concerns, please contact myself or Katherine Dejesus, Membership Auditor, at 510.587.4541.

Cory Cordova
Union Representative
SEIU United Healthcare Workers-West

On the following day, on July 30, 2020, Cordova, by letter, hand delivered, to Mary Okuhara-Yip, the director of human resources' of the hospital, requested the Employer fire Carter for dues arrearages. The body of the letter read:

It has come to my attention that Terrence Carter has been and is currently delinquent in his arrears to the Union through pay period ending 7/17/10. Our Membership Department has sent him several notices regarding this delinquency and has failed to settle this delinquency, nor has he submitted a signed Payroll Deduction form for Union dues.

Therefore, pursuant to Section B, Article 23, of the Collective Bargaining Agreement, entitled "Union-security–Failure to 'Make Required Payments", therefore, Union demands that Lakewood Regional Medical Center terminate Mr. Carter's employment effective immediately. Failure to do so is a breach of the Collective Bargaining Agreement. The Union will have no recourse but to file both a grievance and charges with the National Labor Relations Board.

Any questions or concerns, please contact myself or Katherine De Jesus, Membership Auditor, at 510.587.4541.

On July 30, 2010, the Employer fired Carter pursuant to the Respondent's requests. The Respondent through Mary Okuhara-Yip sent Carter a letter which stated:

July 30, 2010

SENT VIA COURIER AND CERTIFIED US. MAIL [numbers omitted]

Mr. Terrence Carter
[address omitted]

RE: SEIU·UHW Demand for Termination of Employment for Failure to Pay Dues

Dear Mr. Carter,

I am writing to inform you that the Hospital received a letter from SEIU·UHW demanding that the facility immediately terminate your employment for failure to pay union dues in accordance with the requirements of Article 23 of the Collective Bargaining Agreement (CBA). As you know, we have previously communicated to you regarding the contractual mandates faced by the Hospital and the fact that a failure to pay dues may result in the Hospital being contractually forced to terminate your employment upon request from the union. SEIU·UHW has threatened the facility with legal action if it does not immediately comply with its duties under Article 23.B by terminating your employment.

As you are also aware, the Hospital has been in the process of conducting a reduction in force, which has affected your position. We had discussed with you that the contract permits employees affected by a reduction in force to switch to per diem status in lieu of severance, and we offered you such an option. The Hospital has not received a response from you regarding this offer.

However, due to the Hospital's contractual and legal obligations to comply with SEIU-UHW's request, we can no longer legally offer you any position at the Hospital moving forward.

The Hospital's contractual obligations notwithstanding, we believe that it is appropriate in light of your service to the Hospital to still provide you with the severance package that you would have been entitled to under the terms of the contract had SEIU·UHW not made this demand.

Accordingly, although the Hospital can no longer apply the reduction in force terms of the CBA to your separation of employment moving forward, we will continue to process and provide you a severance package, provided you complete the required release.

Please contact me no later than August 6, 2010 if you wish to complete the required release In order to receive the severance Payment.

Mary Okuhara-Yip testified that from the time she received the July 9 e-mail, quoted supra, to the time she sent out the Carter discharge letter, neither she nor any other hospital human resources representative had any dues arrearage related contact with Carter. Cordova testified that Carter was never told, other than by the letters quoted supra, that the union would be seeking his discharge for dues arrearage on any particular date.

V. Analysis and Conclusions

1. The basic law

The parties do not disagree respecting the basic Board law respecting union-security arrearage based discharges. The General Counsel argues that a union seeking the termination of an employee for failing to pay dues and fees has a fiduciary duty to deal fairly with the employee citing *Philadelphia Sheraton Corp.,* 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir. 1963). Before seeking an employee's termination for failure to pay dues, at a minimum, the union must provide an employee with a precise amount of dues owed, the time period in

question, the method of computation, and a reasonable opportunity to meet the dues obligation. Id. at 896. When a union fails to meet these requirements, it violates Section 8(b)(1)(A) and (2) of the Act. *Laborers Local 335 (Burdco Environmental),* 303 NLRB 350 (1991).

The Respondent recognizes the *Philadelphia Sheraton* standard and argues on brief at 4–5:

> A union violates its fiduciary duty unless the following conditions are present:
>
> 1. The union is party to a valid union-security agreement with the employer covering the employee which requires the employee to maintain good-standing membership in the union as a condition of continued employment;
>
> 2. Prior to causing the discharge, the union has notified the employee:
>
> a. He or she is delinquent in his or her dues obligation.
>
> b. The total sum payable to cure the dues delinquency, the time period covered by the delinquency, and the method used in calculating the delinquency.
>
> c. The date by which the delinquency must be cured.
>
> d. Failure to cure the delinquency will result in the union's causing the employer to discharge the employee.
>
> 3. The employee has failed to cure the delinquency by the date specified by the union.
>
> Id. (citations omitted). In addition, "the Board has held that it will not require strict compliance with the rules specified above to permit an employee who has knowingly and not through inadvertence or ignorance evaded his dues obligation to the union to benefit from his noncompliance with that obligation." [Food and Commercial Workers Local 368(A) (Professional Services), 317 NLRB 352, 354 (1995)] at 355 (citations omitted).

2. The Union's compliance with *Philadelphia Sheraton* in causing Carter's discharge

The events respecting the parties' actions and communications relevant here are set forth supra and are not in essential dispute. It is appropriate to apply the *Philadelphia Sheraton* standards to those communications.

First there is no question that the union and the hospital had a valid union-security agreement covering Carter at all relevant times which required Carter to maintain good-standing membership in the union as a condition of continued employment.

To apply the additional standards of *Philadelphia Sheraton,* it is necessary to identify the period and communications involved respecting Carters discharge. Carter was discharged by the hospital on July 30, 2010. The employer took the action pursuant to the union's hand delivered letter to it on July 30, 2010, quoted above, which asserted that Carter had an unremedied dues delinquency:

> It has come to my attention that Terrence Carter has been and is currently delinquent in his arrears to the Union through pay period ending 7/17/10. Our Membership Department has sent him several notices regarding this delinquency and has failed to settle this delinquency, nor has he submitted a signed Payroll Deduction form for Union dues.

It is undisputed that no communication was ever sent by the union to Carter respecting dues arrearages up to the pay period ending on July 17, 2010. Thus the union's letter as quoted above is incorrect. The union–Carter communications that occurred most closely to his discharge were, in reverse chronological order: Cordova's conversation with Carter on or about early July, Cordova's June 18 conversation and hand delivery of the unions May 10 letter, the above quoted May 10 letter, and finally the above quoted March 15 letter. The May 10 letter addressed dues delinquencies current to the April 24, 2010 pay period. During this period Carter made payments to the union on June 8, 2010 and July 1, 2010 as noted supra. At no time were these payments refused or the checks involved uncashed by the union.

This being so, it cannot be said that the union met the *Philadelphia Sheraton* requirements that prior to causing the discharge, the union notified the employee of the total sum payable to cure the dues delinquency, the time period covered by the delinquency which was offered as the basis for the termination, and the method used in calculating the delinquency. Equally as a result of the time delay outdating the earlier letters, the Union had not provided Carter timely with the date by which the delinquency must be cured. Further, an omission that ran though the entire exchange was the union's consistent failure to provide Carter with an accounting of how his dues arrearages were calculated to the extent that his payments were applied to the balances due.

Given all the above, I find that the *Philadelphia Sheraton* standards were not met by the union as to Carter. *Service Employees Local 32B-32J*, 289 NLRB 632 (1988). Without more, under *Philadelphia Sheraton,* the union must be found to have caused an employer to discharge an employee in violation of Section 8(b)(1)(A) and (2) as alleged in the complaint.

3. The free rider defense

While the counsel for the General Counsel has established that the union failed in its fiduciary obligations to Carter respecting his dues delinquencies and therefore the union's seeking and obtaining Carter's discharge by the hospital violated Section 8(a)(1)(A) and (2) of the Act, a second important issue raised by the Respondent needs to be addressed.

The Respondent argues on brief that employees who from hostility, disaffection, or other reason game the dues paying process in an effort to knowingly evade their dues obligation are regarded by the Board as "free riders" who are treated differently from those employees who rather fail to cure their delinquency through inadvertence or ignorance. Thus the counsel for the Respondent argues that even were the strict fiduciary obligations of *Philadelphia Sheraton* and later Board cases not fully met by the union herein, Carter as a free rider was not entitled to benefit from such technical violations given his deliberate plan and intention not to pay his dues.

The free rider exception to *Philadelphia Sheraton* is longstanding. *Great Lakes District Seafarers (Tomlinson Fleet Corp.)*, 149 NLRB 1114 (1964); *Teamsters Local 630 (Ralph's Grocery)*, 209 NLRB 117 (1974); *John J. Roche & Co.*, 231 NLRB 1082 (1977); *Big Rivers Electric Corp.*, 260 NLRB 329 (1982); *I.B.I. Security*, 292 NLRB 648 (1989); *Communications Workers Local 9509 (Pacific Bell)*, 295 NLRB 196 (1989). The Board specifically assigns the burden on this issue to the union. *Auto Workers Local Lodge No. 376 (Colt's Mfg. Co.)*, 342 NLRB 64, 67–68 (2004).

The Respondent argues that Carter was such a free rider. The Respondent notes that Carter, having been a union steward and having negotiated the then-most recent contract with the hospital which contained the union-security clause applicable to his situation herein, was far

from ignorant of the dues rules in place for the hospitals unit employees. Further, counsel for the Respondent argues that Carter demonstrated hostility to the union by withdrawing his dues-checkoff authorization allowing the employer to deduct his dues obligations directly from his paycheck and remit them to the union and also by his participation in encouraging other employees to withdraw their dues-checkoff authorizations as well.

The record is clear that Carter understood his dues obligations at the time he halted dues-checkoff authorization and that he further understood that his payments during the period described were delayed and incomplete. Carter testified:

> My theory, my sentiments, was at that point in time is that, if I don't receive any services, you don't get 2% of my dues—out of my check automatically. Now, like I said before, prior to that, I was paying my dues up until that time when all of [t]his transpired, which means I was in good standing which means the union at that time, at that time, SEIU, UHW-West, was doing their duty. We were represented. I was represented. I was representing my coworkers at Lakewood Regional. Not SEIU International. Not Cory Cordova. I was doing it and my stewards were doing it.
> Q. So, in other words, you testified you didn't feel UHW was functioning as a union and you didn't feel you were being represented by UHW?
> A. We were not being represented fully by UHW at that point in time, at the at the point in time when all this situation transpired which is why—which is why—which is why in good conscience, because I was not getting the service, I was not getting my requests responded to as a union member, which means I paid their salary. If I pay, I have a say. I have a voice in my union. Now, when I don't have a voice in my union and I have to pay for it, then I'm going to—I'm going to slow down the payment. I signed the revocation form for that very same reason. Because services was not granted to me as a union member. So it was in protest.

While this aversion to the union is clear on the record, dissatisfaction or aversion to the union or to union representation is importantly different from employee aversion to payment of required dues and/or an intention not to pay those dues. It is the latter nexus that determines free rider status. Thus, in *Great Lakes District Seafarers (Tomlinson Fleet), 149 NLRB 1114 (1964),* an early "free rider" case holding an employee who is motivated by aversion and had no intention to pay dues, could not properly benefit from rules of payment designed for those employees who might not fully understand the process, specifically relied on the fact that the employee at issue has simply ceased paying dues entirely. So, too, in *Food & Commercial Workers Local 368(A) (Professional Services),* 317 NLRB 352, 354 (1995), the employee clearly understood the dues amounts and payment process but regularly thwarted it and was found by the judge to be consciously avoiding her dues obligation.

The Respondent goes further, however, and argues that Carter was not only hostile to the union, but also had an intention not to fulfill his full dues obligation in a timely way. The Respondent emphasizes Carter's testimony in two instances. The first was Carter's explanation of his hostility to the union, his protest in stopping his dues-checkoff authorization and his "slowing down the payment [of dues]."

The second portion of Carter's testimony advanced by counsel for the Respondent was Carter's adoption of his affidavit admission. Carter testified:

> Q. I'm asking you did you sign an affidavit in which you said because the UHWW was not doing its job and failed to assist me in three grievances, I was not willing to re-execute a dues check-off form or otherwise catch up with my dues payments?
> A. More or less to that—to that statement. More or less, yes.

I find, as the Respondent argues, that Carter's testimony in the two excerpts quoted immediately above is an admission that Carter's failure "to catch up on my dues" was not a mistake based on his ignorance about how much the dues were and further was not caused by his lack of understanding of how the quantum of dues was calculated or how the amount of dues was reduced by his payments over time. Rather, I find his reduced payments were known by him to be short of his full arrearage and were made deliberately as an act of protest. The nature of Carter's protest is discussed further below. It is relevant to note here that Carter told Cordova that he would pay his arrearages only when he had obtained a full accounting of his dues as he had repeatedly asked for in his letters to the union.

The General Counsel opposes the union's assertion that Carter is a free rider. She argues at the General Counsel's Brief at 18: "motivation by employees to disrupt the union's operations by delaying payment 'has no bearing on Respondent's obligation to satisfy its fiduciary duty toward them.' *Teamsters Local 1150 (Sikorsky Aircraft),* 323 NLRB 1173, 1176 (1997)." The General Counsel's attributed proposition however is not the holding of the judge adopted by the Board in *Teamsters Local 1150*. Rather the judge held with Board approval at 1176:

> Dalonzo "followed a pattern of sporadic dues payment, becoming delinquent and paying in a lump sum. . . . He did not evade his financial obligations to the Union. That he may not have read union mail does not alter the situation. Negligence and inattention to union concerns are not the equivalent of the willful attempt to evade lawful financial obligations at which the 'free rider' exception is aimed." *Helmsley-Spear, Inc.,* 275 NLRB 262, 263 (1985); and *Operating Engineers Local 542C (Ransome Lift),* 303 NLRB 1001 fn. 2 (1991).

Further, the judge in *Teamsters Local 1150* determined with respect to the dues delinquency that the individual at issue had made an honest mistake in not paying the union and had told the union he intended to pay the fee.

The General Counsel correctly points out that Carter made repeated payments of dues as noted supra. These payments, as I found supra, were intentionally less than the accruing arrearages his dues obligation was generating. Importantly, however, it was also true that Carter was very interested in learning precisely how his reduced payments were being applied to his arrearages. And this calculation was part of the union's fiduciary obligation to Carter which went completely unmet.

Carter had repeatedly asked the union for "a full accounting of how my dues amount was calculated." Specific notification of how his reduced monthly payments were applied to his arrearages was a necessary part of such an accounting. Carter should have been informed of these necessary specifics and how they affected his dues obligation, i.e. how his bill had been calculated. He never received that oft requested information. Carter, as found supra, made it clear to the union that he would not clear up his arrearages unless and until he obtained such an accounting. I specifically find that the failure of the union to provide such an accounting was the basis and motive for Carter's failure to completely satisfy his arrearages. This is clearly a

different motive than one of simple desire to avoid payment altogether. At this point the question becomes whether the motive found is sufficient to invoke a successful free rider defense.

In *Teamsters, Local Union 150 (Delta Lines),* 242 NLRB 454 (1979), the Board, reversing the judge below, found that without a finding of bad faith on the part of the dischargee in not making the necessary dues payments, the free rider defense cannot overcome the failure of the union to give proper notice to the dues delinquent. The Board stated:

> We disagree with the Administrative Law Judge's implicit legal conclusion that even in the absence of bad faith on Lowd's part the General Counsel had to establish a casual connection between Respondent's admitted failings and Lowd's failure to pay his financial obligations. While such casual connection may, in fact, have existed here, it is unnecessary to establish this connection in the face of Respondent's failure to give Lowd proper notice. Such failure where bad faith has not been shown establishes the violation. The Administrative Law Judge's conclusions to the contrary run counter to Board precedent.[5]
>
> [5] We note that there is no factual basis for the Administrative Law Judge's conclusion, joined in by our dissenting colleague, that regardless of the adequacy of Respondent's notice Lowd was intent on not complying with the union-security clause. Proper notification may well have dispelled Lowd's erroneous views of his obligations. The key here is that such notice was not given, and we will not presume what would have happened in its absence. Our dissenting colleague further indicates that the blame of Lowd's firing rests in his own failure to seek out Respondent more avidly to determine his obligations. This theory neatly shifts the burden of notification from union to employee and, as such, is a curious legal proposition, at odds with Board precedent and without any legal validity. . . .

I conclude based on the above cases that the test for the union's free rider defense is whether or not the union has met its burden of establishing that Carter, in his failure to comply with the union-security provisions, had displayed bad faith.[8] Furthermore, the Board has stated that a union's failure to provide information in response to an employee's repeated inquiries regarding his union dues obligations is evidence of that employee's lack of bad faith in failing to pay his obligations.[9]

On this record I find the union has failed to meet it burden. The record establishes that Carter knew of the dues 2 percent formula and that he was hostile to the union and wanted to slow down dues payments as a protest. However, I find that the record does not show that

[8] The Board's insistence in *Teamsters, Local Union 150 (Delta Lines),* 242 NLRB 454 (1979), that a union showing of an employee's bad faith is necessary to gain an exemption for a failure to meet their notice requirements does not contravene established law. See, e.g., *Electrical Workers*, 341 NLRB 28, 30 (2004), citing *Auto Workers Local 95 (Various Employers)*, 337 NLRB 237, 240 (2001), and *I.B.I. Security, Inc.*, 292 NLRB 648, 649 (1988), for the proposition that a showing that an employee willfully sought to evade his union-security obligations is sufficient to excuse a union's failure to fully comply with its notice requirements. The Board noted at 242 NLRB at 455 that an exception to the union's notice requirements arises "where the employee has displayed bad faith, such as by willfully and deliberately evading his or her financial obligations."

[9] See *Delta Lines*, 242 NLRB at 455.

Carter was intent on not paying his dues at all. It is this lack of evidence, I believe, that is fatal to the union's defense. Rather, I find on the basis of the record as a whole, that Carter did not want to cross the line from "slowing down" dues payments to "refusing to pay." It seems clear, and I find, that that motive in conjunction with his later anger at never receiving the repeatedly requested accounting of his arrearages is what caused Carter to press for an itemized bill that would show him precisely what his updated arrearages were in light of his repeated payments of reduced amounts. The instant record does not permit the logical leap from that state of affairs to the conclusion that Carter simply was intent on not paying and would not pay his dues obligation irrespective of whether or not the union had honored his request and its fiduciary obligation and had in its final "final notice" letter specified the calculations of his arrearages as required.

Having considered all the testimony and documentary evidence respecting Carter as well as the entire record and the briefs of the parties, and applying the burden of proof to the union in these regards, I find that the union has failed to prove that Carter was intent on not complying with the union-security clause and would not have paid his dues arrearages even if the union had met its complete fiduciary obligations to him respecting his dues arrearages before seeking and obtaining his discharge. I therefore find the union's free rider defense on this record as to Carter fails.

4. Summary and conclusions

As set forth above, I have found that the union did not meet its fiduciary obligations to Carter in providing him sufficient information respecting his dues arrearages before it sought his discharge by his employer for failure to meet his union-security obligations. I further found that this fiduciary failure in the context of the union's having sought and obtained Carter's discharge violated Section 8(b)(1)(A) and(2) of the Act. *Philadelphia Sheraton Corp.,* 136 NLRB 888 (1962), enfd. 320 F.2d 254 (3d Cir. 1963).

I have further considered the union's argued free rider defense above. I have determined that the union failed to meet its burden of showing that Carter was acting in bad faith when he did not fully satisfy his dues arrearages and also that Carter's fruitless requests that the union supply an itemized explanation of his dues arrearages as it was obligated to provide is evidence of his lack of bad faith. This being so I have found and concluded that the union did not sustain its free rider defense to the 8(b)(1)(A) and (2) violations of the Act.

All of the above being so, I find and conclude the union violated Section 8(b)(1)(A) and (2) of the Act by seeking and obtaining the discharge of represented employee Terrance L. Carter for failure to tender to the Respondent Union dues or initiation fees, without providing to him the means of calculation of his arrearages including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount or adequately advising him of his obligations before his discharge was sought or obtained.

Conclusion of Law

Given all the above, and on the basis of the record as a whole, the above findings of fact and the posthearing briefs of the parties, I make the following conclusions of law.

1. The Respondent is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

2. Lakewood Regional Medical Center is, and has been at all relevant times an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a healthcare institution within the meaning of Section 2(14) of the Act.

3. The Respondent represents the hospital's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9 of the Act:

Included:	All full-time, regular part-time and per diem service and maintenance, technical, skilled maintenance, and business office clerical employees employed by the Employer and all full-time, part-time, and per diem professional employees.
Excluded:	All other employees, managers, supervisors, confidential employees, guards, physicians, residents, central business office employees (whether facility-based or not) who are solely engaged in qualifying or collection activities, or are employed by another Tenet entity, such as Syndicated Office Systems or Patient Financial Services, employees of outside registries and other agencies supplying labor to the Employer, office clerical employees, registered nurses, registry nurses, traveling nurses, regularly assigned charge nurses, and already-represented employees.

4. The Respondent violated Section 8(b)(1)(A) and (2) of the Act by seeking and obtaining the discharge of represented employee Terrance L. Carter for failure to tender to the Respondent Union dues or initiation fees, without providing to him the means of calculation of his arrearages including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount or adequately advising him of his obligations before his discharge was sought and obtained.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

REMEDY[10]

Having found that the Respondent violated the Act as set forth above, I shall order that it cease and desist therefrom and post remedial Board notices. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. *J. Picini Flooring*, 356 NLRB No. 9 (2010). The posting of the paper notices by the Respondent shall occur at all places where notices to employees and members are customarily posted, with the geographic scope of that posting to be determined at the compliance stage of this proceeding. *Utility Workers (Southern California Gas Co.),* 356 NLRB No. 158 (2011).

[10] The evidence reflects that the day following the Lakewood Regional Medical Center's discharge of Carter at the union's wrongful demand, he would have been laid off. But the circumstances and implications of that discharge and his terminating compensation by the hospital to the remedy herein were not fully litigated. A standard remedy will be directed herein and the circumstances respecting Carter's employee status after his discharge may be considered at the compliance stage of these proceedings.

The Respondent will be directed to make Carter whole for any loss of earnings or other benefits arising out of his loss of employment, with interest. Included in that amount will be any costs associated with reobtaining his former position. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1187 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

On the basis of the above findings of fact and conclusions of law and on the entire record herein, I issue the following recommended

ORDER[11]

The Respondent Union, Service Employees International Union, United Healthcare Workers-West its officers, agents, and representatives, shall:

1. Cease and desist from

(a) Causing or attempting to cause Lakewood Regional Medical Center to discharge or otherwise discriminate against Terrence Carter or any other employee for failure to tender to the Respondent union dues or initiation fees, without providing the means of calculation of the employee's arrearages including a statement of the precise amount and months for which dues are owed and of the method used to compute this amount or adequately advising the employee of his or her obligations or providing a reasonable opportunity to pay his or her arrearages before the employees' discharge is sought or obtained.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Lakewood Regional Medical Center and Terrance Carter, in writing, that the Respondent withdraws and rescinds its request for his discharge, and that the Respondent has no objection to his continued employment without any loss of seniority and other rights and privileges previously enjoyed by him.

(b) Make Carter whole, with interest, for any loss of earnings and other benefits and additional costs of obtaining reemployment he may have incurred as a result of the discrimination against them. Backpay shall be computed and interest calculated in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files, and ask the Lakewood Regional Medical Center to remove from its files, any reference to the unlawful discharge and within 3 days thereafter notify Terrence L. Carter in writing that this had been done and that it will not use the discharge against him in any way.

[11] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

(d) Within 14 days after service by the Region, copies of the attached notice marked Appendix,[12] on forms provided by the Regional Director for Region 21, after being signed by the Respondents' authorized representatives, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted, in the offices and locations set forth in the remedy section of this decision. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or internet site, and/or other electronic means, if the Respondents customarily communicate with their members by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by Lakewood Regional Medical Center, if willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C., June 29, 2011.

Clifford H. Anderson
Administrative Law Judge

[12] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union,
Choose representatives to bargain on your behalf with your employer,
Act together with other employees for your benefit and protection, and
Choose not to engage in any of these protected activities.

In recognition of these rights, we hereby notify employees and members that

WE WILL NOT cause or attempt to cause Lakewood Regional Medical Center to terminate the employment of Terrence L. Carter, or any other employee, for failing to pay union dues and fees pursuant to a union-security clause without first giving that employee notice of the amount owed, the period for which dues are owed, and the method by which the amount was computed, including the crediting of prior payments, and without providing the employee with an opportunity to pay.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL notify Lakewood Regional Medical Center and Carter, in writing, that we withdraw and rescind our request for Carter's termination, that we have no objection to Carter's employment at Lakewood Regional Medical Center.

WE WILL make Carter whole, with interest, for any loss of wages and benefits he may have suffered by reason of his discharge.

WE WILL remove from our files, and ask Lakewood Regional Medical Center to remove from its files, any reference to the unlawful discharge of Carter and **WE WILL**, within 3 days thereafter, notify Carter in writing that we have done so and that we will not use the unlawful discharge against him in anyway.

SERVICE EMPLOYEES INTERNATIONAL
UNION, UNITED HEALTHCARE WORKERS-WEST
(Lakewood Regional Medical Center)

(The Respondent)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information and an electronic version of this decision from the Board's website: www.nlrb.gov.

National Labor Relations Board Region 21
888 South Figueroa Street, 9th Floor, Los Angeles CA 90017-5449
(213) 894-5200, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (213) 894-5229.